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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,967	10/15/2004	Carl Sidonius Maria Andela	254781USOPCT	3397
22850	7590	10/03/2007		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER MONDESI, ROBERT B	
			ART UNIT	PAPER NUMBER
			1652	
			NOTIFICATION DATE	DELIVERY MODE
			10/03/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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## Office Action Summary

Application No.

10/500,967

Applicant(s)

ANDELA ET AL.

Examiner

Robert B. Mondesi

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1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on August 10, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 33-55 is/are pending in the application.
- 4a) Of the above claim(s) 53-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

This Office action is in response to the amendment filed August 10, 2007.

### ***Status of the Claims***

**Claims 1-32** have been canceled. **Claims 33-55** are new and have been added. **Claims 53-55** have been withdrawn for pertaining to nonelected subject matter. **Claims 33-52** are currently pending and under examination.

### ***Restriction requirement***

This application contains **claims 53-55** drawn to an invention nonelected with traverse in Paper filed March 5, 2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Withdrawal of Objections and Rejections***

The objections and rejections not explicitly restated below are withdrawn due to applicants' response in amendment filed August 10, 2007.

### ***New Objection(s) and Rejection(s)***

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 33-34, 38-39, 41-42, 45-49 and 52** are rejected under 35 U.S.C. 102(b) as being anticipated by Dale et al., United States Patent No. 5,879,920.

Dale et al. disclose a granulate comprising granules which comprise an enzyme coated with a polyolefin, wherein the polyolefin is polyethylene and the enzyme is xylanase (abstract, column 2, lines 37; column 3, lines 7-16), wherein the polyolefin has a molecular weight of 3000-20,000 (column 3, Table A; column 4, lines 46-50) wherein the granules contain 0.1 to 20% by weight of the polyolefin (column 6, lines 40-44 and 53-55), wherein the granules further comprise a solid carrier such as an edible carbohydrate polymer (column 5, lines 6-17), wherein the granules comprise a water soluble inorganic salt (column 5, lines 6-17) and wherein the granules comprise a slowly dissolving compound (column 8, line 16-32).

Note to applicants: **Claim 52** is a product by process claim and "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695,

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698, 227 USPQ 964, 966 (Fed. Cir. 1985). As mentioned above Dale et al. disclose the claimed product of the invention.

Thus Dale et al. teach all the elements of **claims 33-34, 38-39, 41-42, 45-49 and 52** and these claims are anticipated under 35 USC 102(b).

**Claims 33-34, 38-39, 42, 44-50 and 52** rejected under 35 U.S.C. 102(e) as being anticipated by De Lima et al. United States Patent No. 6,589,929.

De Lima et al. disclose a granulate comprising granules which comprise an enzyme coated with a polyolefin, wherein the polyolefin is polyethylene and the enzyme is phytase (abstract, column 14, line 52; column 11, lines 30-34 and 63-65), wherein the polyolefin has a molecular weight of 3000-20,000 (column 17, line 20-25) wherein the granules contain 0.1 to 20% by weight of the polyolefin (column 4, lines 4-17), wherein the granules further comprise a solid carrier such as an edible carbohydrate polymer (column 27, Example 8, line 7), wherein the granules comprise a water soluble inorganic salt (column 16, lines 12-30) and wherein the granules comprise a slowly dissolving compound (column 16, lines 12-30), wherein the coating thickness is 20 $\mu$ m or less (column 10, lines 40-57)

Thus De Lima et al. teach all the elements of **claims 33-34, 38-39, 42, 44-50 and 52** and these claims are anticipated under 35 USC 102(e).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 35-37, 40 and 43** are rejected under 35 U.S.C. 103(a) as being unpatentable over Dale et al. United States Patent No. 5,879,920 in view of Masschelein et al. United States Patent No. 6,103,678.

Dale et al. disclose a granulate comprising granules which comprise an enzyme coated with a polyolefin as mentioned above.

Dale et al. do not teach that the polyolefin contains acidic groups such as carboxylic groups or that the acid number is 2-30.

Masschelein et al. teach that the polyolefin contains acidic groups such as carboxylic groups or that the acid number is 2-30 (column 22, lines 5-46).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use polyolefin for the advantages of improved water absorbancy as taught by Dale et al. and Masschelein et al., see Masschelein et al. at column 22, line 8.

***Conclusion***

No claims are allowed

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

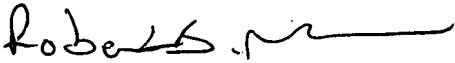
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapu Achutamurthy can be reached on 571-272-0928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert B Mondesi  
Examiner  
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9-27-02